IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.3.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.Nos.2481, 2628 and 11629 of 2002
& W.P.M.P.Nos.3450, 3656 and 15675 of 2002

1. The Union of India rep. by
the Asst. Director General (Estt.),
Department of Posts,
Ministry of Communications,
Dak Bhavan, Sansad Marg,
New Delhi.

2. The Principal Post Master General,
Tamil Nadu Circle,
Chennai-600 002. .. Petitioners in W.P.No.2481 of 2002

1. The Union of India rep. by
the Asst. Director General (Estt.),
Department of Posts,
Ministry of Communications,
Dak Bhavan, Sansad Marg,
New Delhi.

2. The Chief Post Master General,
Tamil Nadu Circle,
Chennai-600 002. .. Petitioners in W.P.No.2628 of 2002

1. Union of India rep. by
The Principal Chief Post Master General,
Tamil Nadu Circle,
Chennai-600 002.

2. The Head Record Officer,
Airmail Sorting Division,
Chennai-600 027. .. Petitioners in W.P.No.11629 of 2002

vs.

1. K.Babu (EDSV)
2. N.Rajkumar (EDSV)
3. J.Sankar (EDMC)

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4. M.P.Subramanian (ED Packer)
5. S.Munusamy (EDSV)
6. L.Chandrasekaran (EDSV)
7. N.Raman (EDSV)
8. R.Banumoorthy (ED Packer)
9. N.Muniammal (ED Packer)
10. M.Vanitha (ED Packer)
11. G.Kuppuraj (EDSV)
12. K.Ravichandrakumar (EDSV)
13. L.Rajendran
14. P.Viswanathan (EDSV)
15. M.Savitri (ED Packer)
16. K.Alamelu (EDDA)
17. P.Sukumar (EDMC)
18. M.Thangapani (ED Packer)
19. M.Kumar
20. N.Buddan (EDSV)
21. E.Govindasamy (EDMC)
22. R.Leelavathy (ED Packer)
23. G.Sekar (EDSV)
24. T.Samuel Dhanraj (EDSV)
25. P.Munusamy (ED Packer)
26. R.Kumayun Kabeer (ED Packer)
27. K.Ganesh (ED Packer)
28. R.John Rosary Joseph (ED Packer)
29. M.Narayanan (EDMC)
30. S.Ashok Kumar (EDSV)
31. V.Sukumar (EDMC)
32. S.Balaji
33. K.Gopinathan
34. A.Ramesh
35. K.Ravi
36. J.Venkateswaran
37. N.Nageswari
38. P.Rajendran
39. M.Gandhi
40. S.Vijayaraghavan
41. T.Rathinam
42. A.Shankar
43. V.Kumar
44. E.D.Narasiman
45. C.Lakshmi
46. C.Dayalan
47. A.Azeez
48. Fiaz Ahamed
49. G.Ravi
50. J.Vijayakumar
51. M.Vimla Devi
52. J.Maheswari
53. T.Zahir Hussain

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54. G.A.Chandra Prakash
55. E.Soundararajan
56. Ansar Bee
57. S.Balasubramaniam
58. G.Velumani
59. P.S.Ravindranathakoor
60. R.Gunasekaran
61. K.Murthy
62. A.B.Mohamed
63. G.Balakrishnan
64. V.Babu Durai
65. Deva Rajan
66. C.Santhakumar
67. G.Srinivasan
68. K.Gunasekaran
69. V.Danaraj
70. N.Ramesh Babu
71. T.A.Velkumar
72. D.Somasundaram
73. Yadavakumari
74. T.Moses
75. B.K.S.Krishnan
76. G.Murthy
77. M.Alraj
78. T.Ravi
79. K.Srinivasan
80. V.Sukumaran
81. J.Sekar
82. S.Ravichandran
83. S.Rukmani
84. G.Mary Porkodi
85. N.S.Indiravathi
86. S.Adikesavan
87. B.Chandrasekar
88. B.Mhd.Samiullah
89. D.Vasudevan
90. G.Mohan
91. P.Nedunchezhian
92. L.Ravichandran
93. A.Karunakaran
94. K.Nithya
95. S.M.Shakul Ahmed
96. A.Pencilaiah
97. G.Panneerselvam

98. The Registrar,
    Central Administrative Tribunal,
    Madras Bench, City Civil Court Buildings,
    Chennai-600 104.

.. Respondents in W.P.No.2481 of 2002

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1. All India Postal Extra Departmental
   Employees Union,
   Chennai City North,
   Divisional Broad Way Post Office,
   Rep. by its Divisional Secretary S.Vedagiri

2. K.Boopathy

3. The Registrar,
   Central Administrative Tribunal,
   Madras Bench, City Civil Court Buildings,
   Chennai-600 104.

.. Respondents in W.P.No.2628 of 2002

1. S.Sivakasi
2. S.Loganathan
3. A.Santhanam
4. E.Selvaraj
5. C.Rajendran
6. M.Prakasam
7. M.John Peter
8. S.Akilan
9. S.Gnanasekaran
10. A.Murthy
11. D.Sundar Sekar
12. R.Muthu
13. K.Anusuya
14. J.Srinivasan
15. A.Shankar
16. K.Murugan
17. S.George Solomon
18. P.Manavalan
19. K.Aliceraj
20. S.Palanivelu
21. G.Samuel Sundar raj
22. M.Karuppiah
23. K.Vedhagiri
24. K.Mathivanan
25. R.Sundar
26. M.K.Murthy
27. M.Padmanabhan
28. G.Gajendran
29. V.Parthiban
30. G.Jayakumar
31. P.Balaraman
32. K.Perumal
33. S.Anthoniyesudoss

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34. G.Veera Raghavan
35. D.John Clement
36. G.Mohana Sundar
37. K.Lakshmanan
38. C.Sundaram
39. R.Michael Victor
40. R.Kaliappan
41. M.Anbazhagan
42. K.Munuswamy
43. C.Gajendran
44. S.Raghu ramulu
45. C.Dass
46. E.Raghu
47. R.Sundaramurthy
48. K.Muthu
49. P.Mani
50. B.Raja
51. N.Sundaresan
52. R.Prabhakaran
53. P.Shanthi
54. H.Ghouse Basha
55. S.Ramamurthy
56. G.Murthy
57. S.Natarajan
58. R.Dilli Babu
59. P.Rajendran
60. K.Shanmugham

61. The Registrar,
    Central Administrative Tribunal,
    Madras Bench, City Civil Court Buildings,
    Chennai-600 104.

.. Respondents in W.P.No.11629 of 2002

Writ Petition No.2481 of 2002 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, after calling for the concerned records relating to the order dated 20.7.2001 in O.A.No.138 of 2001 passed by the 98th respondent and to quash the same.

Writ Petition No.2628 of 2002 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, after calling for the concerned records relating to the order dated 20.7.2001 in O.A.No.209 of 2000 passed by the third respondent and to quash the same.

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Writ Petition No.11629 of 2002 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, after calling for the concerned records relating to the order dated 14.8.2001 in O.A.No.457 of 2001 passed by 61st respondent and to quash the same.

For petitioners in all W.Ps: Mr.B.Shanthakumar, SCGSC

For respondents:

in W.P.No.2481 of 2002:
Mr.R.Malaichamy for
RR-2 to 7, 9 to 20, 22 to 27, 28, 29 to 34, 35, 36 to 39, 41, 43, 46, 47, 48, 54 to 59, 61, 62, 63, 66, 70, 75 to 77,78, 81, 82 to 85, 89 and 90 to 93

in W.P.No.2628 of 2002:
Mr.P.Rajendran for RR-1 and 2

in W.P.No.11629 of 2002:
Mr.Ramasamyrajarajan for
RR-1, 2, 5 to 10, 13, 16 to 21, 23 to 28, 31, 34, 36, 41, 43 to 47, 50, 51, 56 and 57

COMMON ORDER

(The Order of the Court was made by F.M.Ibrahim Kalifulla,J)

In W.P.Nos.2481 and 2628 of 2002, the petitioners are The Union of India represented by the Assistant Director General (Estt.), Department of Posts, Ministry of Communications, Dak Bhavan, Sansad Marg, New Delhi and the Principal/Chief Post Master General, Tamil Nadu Circle, Chennai-600 002. In W.P.No.11629 of 2002, the petitioners are the Union of India represented by the Principal Chief Post Master General, Tamil Nadu Circle, Chennai-600 002 and the Head Record Officer, Airmail Sorting Division, Chennai-600 027.

2. The challenge in all these Writ Petitions is to the orders of the Central Administrative Tribunal, dated 20.7.2001 in O.A.No.138 of 2001 and 209 of 2000 and dated 14.8.2001 in O.A.No.457 of 2001 respectively.

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3. The contesting respondents herein were all employed as substitutes in the place of Group-D employees as and when such employment arose by virtue of certain contingencies like leave, absence etc. The claim before the Tribunal by the contesting respondents related to the withdrawal of the payment of House Rent Allowance (in short, H.R.A) and City Compensatory Allowance (in short, C.C.A) to them on and after 1997-1998.

4. In O.A.Nos.138 of 2001 and 209 of 2000, the challenge was to the order dated 27.8.1999 of the Postal Department, in and by which the payment of H.R.A. and C.C.A. came to be withdrawn by stating that the substitutes in short term vacancies would be paid remuneration on the basis of the minimum of the revised scale of pay of the post plus admissible Dearness Allowance (in short, D.A.) alone.

5. In O.A.No.457 of 2001, the contesting respondents/applicants made a challenge to the orders of the petitioners/Postal Department dated 28.1.1999, 2.2.2001 and 9.4.2001 for the recovery of the payment of H.R.A. and C.C.A. as the excess payment made to the contesting respondents for the period 1.1.1996 to 31.7.1998 and also for a direction to the petitioners to refund the amounts if any already recovered.

6. The Tribunal, on a detailed analysis of the issue relating to the payment of H.R.A. and C.C.A. to the substitutes, has held as under in paragraphs 9 and 10 in O.A.Nos.138 of 2001 and 209 of 2000:

> "9. ... It is pursuant to these communications the impugned order was passed. It is clear from those communications that though the respondents wanted to change the rules immediately the same has not been given effect to by amending the rules or the relevant portion of the manual. Further correspondents are still going on to implement the decision and no final decision has been taken to implement the same. Even from the Assistant Director General (Estt) New Delhi, letter dated 5.7.2001, addressed to the CPMG, Tamil Nadu Circle, it is clear that no final decision has been taken so far. The said letter reads as thus:
>
> "Ref: No.APA/65-209/2000
> dated 20.6.2001.
>
> In continuation of this office letter No. Even dated 3.7.2001, the further information is as follow:
>
> 1. The Dte had issued no Gazette notification, in connection with order under which the payment of HRA and CCA to be paid to substitute working in short term vacancies of postman/Gr.'D' had been withdrawn.

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2. Regarding correction Appendix VI Vol.IV of postal Manuals, "Manual Revision Committee" is doing the work relating to revision of Postal Manuals and the same is still under review."

It is clear from the above said letter that rule has not been amended so far and the relevant provisions in the Manual has not been diluted. In any way so long as the rules have not been amended and given effect to, executive instructions cannot be relied on for the purpose of denying HRA and CCA for the purpose of calculation of wages. It is clear from the proceedings that the applicants are unapproved candidates and H.R.A. and C.C.A. was paid to them from 1971 onwards. Another argument was taken by the learned counsel for the respondents that HRA and CCA are only allowances and therefore the applicants cannot claim them as a matter of right. We cannot accept this argument for the reasons stated above and apart from the same it is a practice in vogue from 1971 onwards. As the applicants and predecessors are serving from 1971 onwards, they have got legitimate right and they are entitled to the benefit to have HRA and CCA for the purpose of calculation of wages and that right cannot be taken away on the basis of some correspondences alone. The claim of legitimate expectations are fortified by the proceedings of 1987, of which we have made references earlier.

10. In the result, we quash the impugned order and hold that the applicants in both the OAs are entitled to have the HRA and CCA for the purpose of calculating wages payable. If any amount is payable to the applicants while implementing this order we direct the respondents to pay the same to the applicants within a period of two months from the date of receipt of a copy of this order. The OAs are allowed as above. No costs."

7. In O.A.No.457 of 2001, the Tribunal, by order dated 14.8.2001, held as follows:

"2. In the counter statement filed by the respondents they rely on the proceedings of the Assistant Director General where it is stated that the applicants are eligible to get only salary and DA and not HRA and CCA. The validity of the same order came before us for consideration in OA 138 of 2001 and 209 of 2000 wherein we have held that HRA and CCA also forms part of the emoluments payable to the Group 'D' employees and we have taken note of the Postal Manual for the said purpose. In fact in the counter affidavit

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filed in those cases, the department admitted that HRA and CCA forms part of the emoluments payable to the employees. The rules has not been changed. The department is only intending to amend the rules and as on this date we have to implement the rules as it stand. On this ground we hold that the applicants are entitled to HRA and CCA and no amount is liable to be recovered from them. In view of the same, we allow the OA and the impugned order is also set aside. The respondents are also directed not to recover the amount if they have paid the amount. In case the amount is already recovered the same will be paid to the respective applicant within a period of one month from the date of receipt of a copy of this order. OA allowed."

8. Assailing the above orders of the Tribunal, Mr.B.Shanthakumar, learned Senior Central Government Standing Counsel (in short, SCGSC) appearing for the petitioners, after taking us through the Preface to the Posts and Telegraphs Manual (Volume IV) Establishments, as well as the financial powers of the Director General of Postal Services, contended that the payment of H.R.A. and C.C.A. to the substitutes cannot be construed as part of the 'wages' payable to the regular Group-D employees, that by virtue of the powers vested with the Director General of Postal Services under the relevant Regulations, the said authority had every power to pass the order dated 17.7.1998, which came to be implemented by the subsequent proceedings, in and by which it was held that the substitutes are entitled only for the revised scales of pay of the post concerned (Postmen, Mailguards and Group-D, as the case may be) plus admissible D.A. alone excluding H.R.A. and C.C.A. The learned SCGSC relied upon a Division Bench decision of this Court reported in 2006 (4) L.L.N. 299 (Kendriya Vidyalaya Sangathan vs. D.Sarala) and the Supreme Court decision reported in 1994 (2) L.L.N. 1032 (Director, Central Plantation Crops Research Institute, Kesaragod and others vs. M.Purushothaman and other) in support of his submissions.

9. As against the above submissions, Mr.Malaichamy, learned counsel appearing for the contesting respondents in W.P.No.2481 of 2002, contended that though the contesting respondents were called as 'substitutes' of Group-D employees, having regard to their continued engagement as substitutes, they had become part of the Postal establishment, and therefore, by virtue of the Rules applicable to such substitutes as per the Posts and Telegraphs Manual (Vol.IV) applicable to Establishments, read along with Appendix-6 therein, they were entitled for continued payment of HRA and CCA along with the pay applicable to the concerned employees who were the substitutes while rendering service to the petitioners. The learned counsel for the contesting respondents therefore contended that unless there was an amendment to the said Rule relating to the substitutes, the petitioners were not legally justified in resorting to the withdrawal of H.R.A. and C.C.A. or the attempted recovery of the

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payments made from 1.1.1996.

10. Similarly, Mr.P.Rajendran, learned counsel appearing for the contesting respondents in W.P.No.2628 of 2002, while reiterating the submissions of Mr.Malaichamy, relied upon the decisions of the Supreme Court reported in 1992 (4) S.C.C. 432 (Union of India vs. Deep Chand Pandey) and 1995 (5) S.C.C. 678 (H.P. State Electricity Board vs. Tirath Raj) and contended that by virtue of Articles 13(1), 313, 366 and 372(1) of the Constitution of India, the Rules as contained in Volume IV of the Posts and Telegraphs Manual, Establishments, read along with Appendix-6 therein, continue to operate and thereby the right accrued to the substitute-employees cannot be altered without proper amendment to the Rules. According to the learned counsel for the contesting respondents, the Clause contained in Appendix-6 of the Posts and Telegraphs Manual Vol.IV, Establishments, namely the Note to Rule 4, which states that the term "minimum pay" referred to therein includes "dearness and all other allowances", would take within its compass the payment of H.R.A. and C.C.A.

11. Mr.S.Ramasamyrajarajan, learned counsel for the contesting respondents in W.P.No.11629 of 2002, relied upon the decisions of the Supreme Court reported in AIR 1987 SC 2342 (Daily R.C.Labour, P & T Deptt. vs. Union of India), AIR 2002 SC 1223 (State of Karnataka vs. M.U.Non-Teaching Employees Association) and AIR 2000 SC 3554 (Food Corporation of India vs. Shyamal K.Chatterjee) to contend that the payment of H.R.A. and C.C.A. has been stated to be part of 'wages' in those decisions and therefore, it is too late in the day for the petitioners to contend that by way of executive instructions, such payments which were in force right from the year 1971, could be abruptly withdrawn without any amendment to the Rules.

12. Having heard learned counsel for the respective parties and on a perusal of the impugned orders of the Tribunal as well as the relevant documents, at the outset, we wish to state that the Rules as framed under Appendix-6 of Vol.IV of Posts and Telegraphs Manual-Establishments, though came into being as early as from the year 1926, the same continue to remain in force till date, which was a pre-Constitutional Rule. The said Rule under Appendix-6 came to be framed by virtue of Rule 100 of Vol.IV of Posts and Telegraphs Manual-Establishments. The employment of substitutes has been dealt with under Rule 100(b) which reads as under:

> Rule 100(b): by employment of substitutes:
>
> (i) in post offices, in the place of postmen and Group 'D' servants (other than boy messengers) Deptt. Of I. and L. Letter No.20, P.T.E., dated 28.8.1926);
>
> (ii) in telegraph offices, in the place of Group 'D' staff (other than boy peons). (Department of I & L. Letter No.Est.B, 60-2/34, dated 30-7-1936);
>
> (iii) in the place of telegraphists, telephone operators, transmission assistants and wireless operators.

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NOTE—The rules regulating the employment of substitutes in casual leave vacancies are given in Appendix 6 of this volume."

By virtue of the provisions contained in the Note to Rule 100(b), Appendix-6 came into being. Appendix-6 relates to Casual Leave and has been specifically captioned as "Rules for the employment of paid substitutes in casual leave vacancies of postmen, village postmen and Group "D" postal officials. Rule 4 of Appendix-6 is to the following effect:

"4. The amount to be paid to a substitute employed under these rules must not exceed the minimum pay of the time-scale in force at the office concerned for the class to which the absentee belongs. Payment must be made direct to the substitute, whose receipt should be obtained.

NOTE—The term "minimum pay" referred to above includes dearness and all other allowances."

13. In the light of the said Rules, by virtue of Article 372(1) of the Constitution, the said Appendix-6 read along with Rule 100 of Vol.IV of Posts and Telegraphs Manual-Establishments, continue to govern the service conditions of the substitute-employees in the Postal Department. In the decision reported in 2003 (8) S.C.C. 413 (Illachi Devi vs. Jain Society, Protection of Orphans India), the Supreme Court has stated the legal position as regards the operation of Article 372 of the Constitution vis-a-vis the pre-Constitutional Rule as under:

"20. .... The Rules have been framed by the Governor-General-in-Council, which, after the enforcement of the Constitution of India, would be a law within the manner of Article 372 of the Constitution of India. . ..."

14. Under Article 366(10) of the Constitution, it has been specifically provided that the term "existing law" would mean among other instructions, a law, Rule or Regulation passed or made before the commencement of the Constitution by any Legislature, authority or person having power to make such a law, Rule or Regulation.

15. Even under Article 313 of the Constitution, it has been specifically provided until other provision is made under the Constitution, all the laws in force immediately before the commencement of the Constitution and applicable to any public service or any post which continue to exist after the commencement of service or post under the Union or a State, should continue to be in force so far as the same is consistent with the provisions of the Constitution.

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16. Under Article 13 of the Constitution, which deals with the laws which are inconsistent with or in derogation of the provisions contained in Part-III alone have been held to be void. Even under Article 13 of the Constitution, it is specifically stated under Article 13(3)(a) that "law" would include any Rule, Regulation, Notification, custom or usage having in the territory of India, the force of law.

17. In the above context, it will also be appropriate to refer to the decision of the Supreme Court reported in AIR 1965 SC 1061 (Builders Supply Corpn. vs. Union of India) wherein, a Constitution Bench of the Supreme Court has stated in unequivocal terms, while dealing with Article 372(1) of the Constitution, as under in paragraph 20:

> "20. It is, however, clear that there was no difference of opinion on the question that common law was included within the expression "law in force" used by Art.372(1). The majority judgment expressly states that
>
> > the relevant expression "law in force" includes not only statutory law, but also custom or usage having the force of law and as such, it must be interpreted as including the common law of England which was adopted as the law of this country before the Constitution came into force."

18. Therefore, applying the above ruling of the Supreme Court to Appendix-6 of Vol.IV of P & T Manual-Establishments, in consonance with Rule 100 of Vol.IV of P & T Manual-Establishments, we are convinced that the said Appendix-6 along with Rule 100 continue to remain in force even as on date. Under Rule 4 of Appendix-6, the 'Note' makes it clear that the term "minimum pay" payable to substitutes, would include apart from D.A., "all other allowances". Therefore, the question is whether H.R.A. and C.C.A. which were paid to the substitutes right from the year 1971, could be abruptly withdrawn by the order of the Director General of Postal Services, without any specific provision contained in the Rule.

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19. According to the learned SCGSC appearing for the petitioners, the Preface to the P & T Manual-Vol.IV-Establishments, and the Schedule-I-A of the financial powers of the Director General, Postal Services, which were prescribed every now and then, empowers the Director General of Postal Services to pass orders as regards the Special Pay, Compensatory Allowance and H.R.A.

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20. The learned SCGSC made a specific reference to Schedule I.A of the said financial powers, which enumerates all the financial powers of the Director General of Postal Services. In the said Schedule I.A., while prescribing the nature and extent of powers, a reference has been made to letter No.27-P.T.E, dated 14.11.1928 and No.150-Est., A-20, Coll.II, dated 14.1.1931. The said prescription reads as under:

> "2. Additions to Pay:
>
> (a) Special Pay, compensatory and house rent allowances:
> May sanction the grant of special pay or of compensatory or house rent allowances to the holders of permanent posts, posts which are within his powers of creation in any locality at the rate and subject to the terms and conditions laid down by the Government of India for Government servants of similar status in the same locality.
>
> Note 1:
> The Director General of Posts and Telegraphs has been authorised to sanction the grant of special pay or compensatory allowance (including house rent allowance) or both to the holder of a temporary post created by him in any locality at the rate and subject to the conditions laid down by the President for permanent officials of the Indian Posts and Telegraphs Department of similar status serving in the same locality."

21. By referring to the said prescription in Schedule I.A, the learned SCGSC contended that it was within the powers of the Director General of Postal Services to grant Special Pay or Compensatory Pay or H.R.A. to the holders of temporary posts and therefore, it was well within his powers even to withdraw such Special Pay or Compensatory Pay or H.R.A. According to the learned SCGSC, when in exercise of the said powers vested in him, the Director General of Postal Services issued the Office Memorandum dated 17.7.1998, stating that the payment of the revised scales of pay of the substitutes can be 1/30th of the pay at the minimum of the relevant pay scale plus Dearness allowance for one full day's work, excluding the H.R.A. and C.C.A., the contesting respondents cannot question the same.

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22. When we refer to the submissions made on behalf of the petitioners, the only power traceable is to the financial powers vested with the Director General of Postal Services, as provided under the said Schedule I.A. We are of the view that such an unbridled power claimed by the Director General of Postal Services to withdraw the substantial part of the wages of the substitutes in the form of H.R.A. and C.C.A., cannot be held to be existing when considered in the light of Appendix-6 to Vol.IV of the P & T Manual-Establishments, which specifically mentions that the substitutes are entitled for the pay in the time scale, which should include apart from D.A., "all other allowances". When once the comprehensive statutory Rule specifically providing for the payment of the pay and allowances is existing, which continue to remain in force as on this date, it will be preposterous to suggest that based on the executive power entrusted with the Director General of Postal Services for sanctioning the Special pay or Compensatory Pay or H.R.A. to the holder of a temporary posts created by him in any locality, would authorise or empower the Director General of Postal Services to unceremoniously withdraw such payment, which in our considered opinion is fully governed by the statutory Rules. We are therefore unable to accept or appreciate the stand of the petitioners that the financial powers of the Director General of Postal Services, as mentioned in the said Schedule I.A., would enable him to pass any order much less the proceedings in the form of Office Memorandum, dated 17.7.1998 and withdraw the payment of H.R.A. and C.C.A. de-hors the statutory Rules remaining in force under Appendix-6 to Vol.IV of the P & T Manual-Establishments.

23. In the above context, the decisions relied upon on behalf of the contesting respondents fully support their stand. In the decision reported in AIR 2002 SC 1223 (cited supra), the Supreme Court, while approving of the Division Bench decision of the High Court, has stated as under in paragraph 9:

> "9. Before dealing with the argument based on Article 14 we may advert to the comment of the Division Bench that the payment of HRA and CCA is not in the nature of concession as opined by the learned single Judge. True, as pointed out by the Division Bench, the HRA and CCA, which are components of total salary undoubtedly form part of conditions of service and it may not be accurate to describe them as concession. ... "

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24. The above statement of law made by the Supreme Court fully supports the claim of the contesting respondents that the payment of H.R.A. and C.C.A. right from the year 1971, has become the right of the substitutes and has become part of the conditions of their service, which is also governed by the Rule stipulated in Appendix-6 of Vol.IV of the P & T Manual-Establishments. Under Appendix-6 in Rule 4 of the P & T Manual, Vol.IV, Establishments, the "Note" specifically mentions that the term "minimum pay" referred to therein, would apart from the time scale of pay, include not only the D.A., but "all other allowances". The expression "all other allowances" therein would cover H.R.A. and C.C.A. to its full extent, which were paid right from the year 1971 onwards. Therefore, it would be wholly illegal for the petitioners to have withdrawn the payment of H.R.A. and C.C.A. by an executive order passed by the Director General of Postal Services.

25. Reliance placed by the learned SCGSC for the petitioners to the decisions reported in 2006 (4) L.L.N. 299 (cited supra) and 1994 (2) L.L.N. 1032 (cited supra) are clearly distinguishable. In the decision reported in 2006 (4) L.L.N. 299, the decision of the Supreme Court reported in 1994 (2) L.L.N. 1032 has been followed. In the decision reported in 1994 (2) L.L.N. 1032, the question for consideration was whether the employees of the Central Plantation Crops Research Institute are entitled to H.R.A. although they are offered official accommodation and they refused to occupy the same. It was in that context, the Supreme Court held that the H.R.A. would be covered by the definition of Compensatory Allowance, which is in lieu of the accommodation and therefore, when it is given only to compensate for the amenities which are not available or provided to the employees, the moment the amenities are provided or offered, the employees should cease to be in receipt of the accommodation which is given for want of it. It was the said principle which was followed by the Division Bench of this Court in the said decision reported in 2006 (4) L.L.N. 299. The Division Bench of this Court, following the above decision of the Supreme Court reported in 1994 (2) L.L.N. 1032, held that the contesting respondents therein cannot as a matter of right, claim H.R.A. even after they were allotted a residential accommodation.

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26. In the case on hand, it is not the case of the petitioners that the substitutes were allotted any housing accommodation and based on such allotment or offer of housing accommodation, the H.R.A. was sought to be withdrawn. Therefore, the said decision of this Court reported in 2006 (4) L.L.N. 299, in which the Supreme Court decision reported in 1994 (2) L.L.N. 1032 was followed, is not applicable to the facts of this case.

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27. In fact in the decision reported in 1983 (1) S.C.C. 525 (Sanjit Roy vs. State of Rajasthan), the Supreme Court has went to the extent of holding that the right to wages is a fundamental right.

28. In the course of the submissions, the learned SCGSC appearing for the petitioners also took a stand that the contesting respondents cannot be held to be in the services of the petitioners and therefore, they are not entitled to move the Original Applications before the Tribunal. The said submission cannot be permitted to be made before this Court, inasmuch as no such plea was ever raised or argued before the Tribunal. Even in the affidavit filed in support of the Writ Petitions, no such contention was raised. Only in the course of the oral submissions made before us, the said contention was raised stating that it is a legal contention, and therefore, the petitioners are well within their right to raise the contention. We are not in a position to accept the same for more than one reason.

29. The contention that the substitutes are not in the services of the petitioners, is not purely a question of law. It is a mixed question of fact and law. Admittedly, the substitutes who are the contesting respondents, were being engaged by the petitioners and were being paid the H.R.A. and C.C.A. in the scale of pay applicable to Group-D employees for more than three decades. It is too late in the day for the petitioners to contend that the substitutes are totally strangers and are not in the services of the petitioners. Therefore, without proper pleading and in the absence of necessary materials placed before the Tribunal and having failed to raise such a contentious issue before the Tribunal, the petitioners cannot be permitted to raise the plea for the first time in these Writ Petitions.

30. Moreover, on more than one decision, the Supreme Court has held that even if daily wage employees are not appointed to the post, the Administrative Tribunals Act, 1985 is applicable and such employees would be entitled to move the Tribunal for redressal of their grievances. In this context, the decisions of the Supreme Court reported in 1992 (4) S.C.C. 432 (cited supra) and 1995 (5) S.C.C. 678 (cited supra) can be referred to.

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31. For all the above stated reasons, we are fully convinced that the conclusion of the Tribunal in holding that without proper amendment to the Rules, the petitioners are not entitled to withdraw the payment of H.R.A. and C.C.A., is perfectly justified and therefore, we do not find any scope to interfere with the impugned orders of the Tribunal.

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32. The Writ Petitions fail and the same are dismissed. No costs. W.P.M.Ps. are closed.

cs

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to

1. The Asst. Director General (Estt.),
   Department of Posts,
   Ministry of Communications,
   Dak Bhavan, Sansad Marg,
   New Delhi.

2. The Chief Post Master General,
   Tamil Nadu Circle,
   Chennai-600 002.

3. The Principal Chief Post Master General,
   Tamil Nadu Circle,
   Chennai-600 002.

4. The Head Record Officer,
   Airmail Sorting Division,
   Chennai-600 027.

5. The Registrar,
   Central Administrative Tribunal,
   Madras Bench, City Civil Court Buildings,
   Chennai-104.

+1 cc to Mr.B.Shanthakumar, Advocate Sr.No.15028.

+1 cc to Mr.Ramaswamy Rajarajan, Advocate Sr.No.14714.

+1 cc to Mr P.Rajendran, Advocate Sr.No.14533.

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MJ(CO)
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